



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0051]

RIN 1625-AA11

Regulated Navigation Area; Ice covered waterways in the Fifth
Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) on the navigable waters of the Fifth Coast Guard District. This RNA will allow the Coast Guard to impose and enforce restrictions on vessels operating within the RNA where a threat to navigation exists due to ice covered waterways. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE OF 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Requests for public meetings must be received by the Coast Guard on or before **[INSERT DATE OF 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2014-0051. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.
- (2) Fax: (202) 493-2251.
- (3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Tiffany Johnson, Fifth Coast Guard District Waterways Management Branch, U.S. Coast Guard; telephone 757-398-6516, e-mail Tiffany.A.Johnson@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2015-0051 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2015-0051 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

This is the first publication for this proposed action.

C. Basis and Purpose

The legal basis for this rulemaking is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; and DHS Delegation No. 0170.1. Under these authorities the Coast Guard may establish a Regulated Navigation Area in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. The purpose of this RNA is to mitigate the potential threat ice poses to the maritime public in the Fifth Coast Guard District by implementing control measures on vessels of certain characteristics.

During an average or severe winter, the presence of ice in waterways presents numerous hazards to vessels. Such hazards include vessels becoming beset or dragged off course, sinking or grounding and creating hazards to navigation. The presence of ice in a waterway may hamper a vessel's ability to maneuver. Visual aids to navigation may become submerged, destroyed, or moved off station, potentially misleading the vessel operator to unsafe waters. Ice abrasions and ice pressure may compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach. Vessels operating in

these conditions could introduce hazards to the maritime public and environment.

To ensure navigation and vessel safety, the cognizant COTP will impose navigation restrictions through this regulation in ice covered waters. Ice generally begins to form in the northern area of the Fifth Coast Guard District between late December and early January, and later in the southern area. Once ice buildup begins, it may affect the transit of large ocean-going vessels. Air and water temperatures typically return to levels that are no longer favorable for ice formation in early to mid-March.

D. Discussion of the Proposed Rule

To address the aforementioned hazards, this proposed rule will establish an RNA encompassing all navigable waters of the United States, as that term is used in 33 CFR 2.36, within the geographic boundaries of the Fifth Coast Guard District, as defined in 33 CFR 3.25-1. The Coast Guard will implement control measures on vessels with certain characteristics in waterways when necessary to safeguard people and vessels from the hazards associated with ice. As indicated above, the Coast Guard expects to control marine traffic in certain waterways if ice conditions present hazards that threaten safe navigation.

Whenever it is determined that control measures are necessary, the cognizant COTP will notify the maritime community of any limitations, restrictions, or prohibitions in place

affecting vessels that intent to transit through the RNA. Notification will be through h a variety of means, including via a variety of means, the Homeport website, Marine Safety Information Bulletins, email notifications and Broadcast Notice to Mariners. when determining if vessels may transit through the RNA, the Coast Guard will consider the prevailing ice conditions, hull material types, horsepower, volume of vessel traffic and any other relevant factors. Vessels capable of operating in the prevailing ice condition will be allowed to enter into or transit within the RNA as specified by the cognizant COTP.

E. Regulatory Analyses

We developed this rulemaking after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this proposed regulation could limit

or prevent traffic from transiting certain waterways in the Fifth Coast Guard District, the effect of this proposed regulation will not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during the effective period. The Coast Guard anticipates only having to implement control measures in certain waterways within the RNA for limited durations of time. Vessel traffic capable of operating in such conditions will be allowed to enter into or transit within the RNA as specified by the cognizant COTP. The cognizant COTP will make notifications of the regulated area to the maritime public via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter into or transit within the RNA during times when ice formation is favorable. This regulated navigation area will not have a significant economic impact on a substantial number of small

entities for the same reasons described under Regulatory Planning and Review.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary RNA. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.550 to read as follows:

§ 165.550 Regulated Navigation Area; Ice Covered Waterways within the Fifth Coast Guard District.

(a) Regulated area. The following area is a Regulated Navigation Area (RNA): The navigable waters of the Fifth Coast Guard District, as described in 33 CFR 3.25.

(b) Definitions. As used in this section:

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the cognizant Captain of the Port (COTP) to assist in enforcing the RNA area described in paragraph (a) of this section.

(2) Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessel(s) assigned and authorized by cognizant COTP.

(3) Horsepower means the total maximum continuous shaft horsepower of a vessel's main propulsion machinery.

(4) Cognizant COTP means the Coast Guard Captain of the Port with jurisdiction over the geographic area affected.

(c) Regulations. (1) The general regulations governing Regulated Navigation Areas found in 33 CFR 165.10, 165.11, and 165.13, including the Regulated Navigation Area described in paragraph (a) and the following regulations, apply.

(2) Except as provided in paragraph (c) (3) of this section, vessels of certain characteristics are not authorized to enter or transit within this RNA when the cognizant COTP determines prevailing ice conditions threaten the navigational safety of vessels. The cognizant COTP or designated representative will evaluate local marine environment conditions prior to issuing any control measures regarding vessel navigation. Control measures that may be implemented include, but are not limited to, vessel restrictions associated with horsepower and hull material type, and the requirement to participate in vessel convoys.

(3) Any deviation from the requirements set forth by the cognizant COTP per paragraph (c) (2) of this section must be authorized by the Coast Guard District Commander, the cognizant COTP, or a designated representative. Vessels not meeting the requirements established by the cognizant COTP that are granted permission to enter or transit the RNA must do so in accordance

with the directions provided by the cognizant COTP or designated representative. To request permission to transit the regulated navigation area, the COTP or COTP representative can be contacted on VHF-FM channel 16 (156.8 MHz) or via telephone, as follows:

- (i) COTP Delaware Bay: 215-271-4940;
- (ii) COTP Baltimore: 410-576-2693;
- (iii) COTP Hampton Roads: 757-483-8567;
- (iv) COTP North Carolina: 910-343-3882.

(4) The cognizant COTP will notify the public of restrictions via the methods described in 33 CFR 165.7, through the Coast Guard Homeport website, Broadcast Notice to Mariners, Marine Safety Information Bulletins, and through email listservs. The Coast Guard vessels enforcing this RNA can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). The cognizant COTP and his or her designated representatives can be contacted at telephone number listed in paragraph (c)(3)(i) through (iv) of this section. Additionally, official patrol vessels may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA.

(5) The Cognizant COTP or a designated representative will notify the public of any changes in the status of this RNA via broadcast notices to mariners on marine band radio VHF-FM channel 22A (157.1 MHZ) or VHF-FM channel 16 (156.8 MHZ).

Dated: June 2, 2015.

Robert J. Tarantino
Captain, U.S. Coast Guard
Acting Commander, Fifth Coast Guard District
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7/9/2015]